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File No. O. Electricity (surcharge) 49

Legal **DEPARTMENT**

A. **BRANCH**

Subject:— Opinions Under the Bombay Electric (surcharge) Act.

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File No. O. Electricity (Surcharge)/49

Std. Sectt. Slip 24-B

396-A

[illegible] (Surcharge)/49.

Serial No.	Compilation No.	Subject	Pages.
1.		Opinions under the Bombay Electric (Surcharge) Act.	
1.	R.I.No.1242 27-1-1947. O.No. 4043 13-4-1949.	Levy of Surcharge- Bombay Electricity Supply (L.V.D.C.) order 1944. and Electricity (Supply) Act. 1948.	1--4
2.	R.I.No.1997 1/43. J.No.14863/ 21-12-1949.	~~--56--~~ S. 6 Whether the Supply Company can recover surcharge from the Municipality in view of specific provision in the agreement be between the Company and the Municipality.	5--10

Submitted.

Please see the P.W.D.Note at pp. 175-176 ante. The question in these papers relates to the payment of surchadge by the India security Printing Press and the Central Distillery, Nasik to the Nasik Deolali Electricity Supply Co.

In order to compensate electric undertaking for the increase in the cost of production, Govt. issued an ordercalled the Bombay Electric Supply (Licensed Undertakings War Costs) Order, 1944 whereunder Electricity Supplying Companies were required to levy a surcharge at approved rates. Clause 5 of the Order enacted that :.

"Uppn the rate of ~~a~~ War costs surcharges being ~~f~~ fixed by the provl.Govt. from time to time in accordance with this Order, it shall not be lawful for the licensee or sanction holder concerned to supply energy at other than charegee surcharged at the rate for the time being so fixed."

The 2nd proviso to this clause provided that:

"Provided further that no War Costs surcharge ~~n~~ shall be effective upon the charges for the supply of energy under any contract entered into after the ~~2~~ 1st May 1942, unless such contract provides for the same chrges for energy as have been contained in similar previous contracts for similar supply by the licensee or sanction holder concerned (as to which in the event of dispute by any party interested, the decision of the Provl. Govt.shall be final) or unless and such extent as such application may be expressly ordered by the Provl.Govt."

In accordance with this Order, the Nasik Deolali Eled. Supply Co, Was charging a surcharge and the Master, security press has been paying it since 1944. In 1948, a doubt arose about the legality or otherwise of this surcharge and the Master made a representation to Govt. claiming exemption with retrospective effect. The exemption is claimed on the following two grounds:

(1) That in the agreement between the Press and the Co. there is a fuel clause whereunder cost of fuel is taken into account in preparation of the bill; and

(2) The Central Distillery, Nasik which is also a consumer of the Co, is exempted from the payment of the surcharge.

The P.W.D. has examined the whole case in its note at pp. 153-56 ante and has also obtained the remarks of the Examiner, O.A. (p.167) and the Electrical Engineer to Govt. (P.173). Shortly put, the P.W.D. is of opinion that the Security Press cannot claim exemption and that the Central Distillery was wrongly exempted. The R.L.A. is requested to advise whether the view taken by the P.W.D. is correct.

Exemption from the surcharge could have been claimed if the case had fallen within the 2nd proviso to clause 5 of the Bombay Electricity supply (Licensed Undertakings War Costs) Order 1944. The supply Co. is supplying electricty to the Security Press under an agreement entered into in the year 1939. It is hence obvious that notwithstanding the fuel clause, the Press would be liable to pay the surcharge in accordance with the provisions of the Order of 1944. No exemption will be permissible.

As regards the Central Distillery, Nasik, it appears that the original agreement for supply was entered into in the year 1939, but that in order to recoup the increased cost of fuel a revised rate on a sliding scale was adopted from 1940 onwards. (vide para. 4 of Supdt., Govt. Central

DVD/S.S.

Office of the R.L.A.

Levy of surcharge.
Bombay Electricity Supply (L.U.W.C.) 1944
and
Bombay Electricity (Surcharge) Act,
and
Electricity (Supply) Act, 1948.

It appears that the Indian Security Printing Press could not claim exemption from the levy of surcharge under the Bombay Electricity Supply (Licensed Undertakings' War Costs) Order, 1944 and the Bombay Electricity (Surcharge) Act, 1946, nor could the Government Central Distillery claim any such exemption. However after the Electricity (Supply) Act, 1948, came into operation, the surcharge would not be leviable.

Sd/-
12/4
Remembrancer of Legal Affairs.

DVD/5.4. U.R. to P.W.D., No.4043 , dated the 23th April 1949.

Submitted.

Please see P.W.D. note at p.m.5.

The facts of the c ase are as under:-
The Athani Municipality and the supply Co. have entered into an agreement on 29-11-43 in respect of street-lights for aperiod of six yearsfrom the date of commencement of supply of energy to the street-lights at Athani.

According to para 6 of the above agreement, the licensee has agreed not to levy surcharge of 33 1/3% sanctioned by Govt. from Municipality for street- lights .

The supply co. has now demanded surcharge from t e municipality . The Elec. Engineer to Govt. in his note at p-3 ante states that the Company is apperntly claiming the surcharge as per clause 6 of the Bombay Electricity (surcharge) Act, 1946. But however in view of the specific provisions in clause 2(c) of the agreement between the Company, XX it is doubtful whether the company can recover the surcharge from the municipality. The question for consideration of the Remembrancer of Legal Affairs is whether the company can recover surcharge from the Municipality ?

The agreement between the Athani Municiaplity and the supply Co. has been entered into on 29-11-1943. It has been infirmally ascertained from the office, of he Electriacal En ineer that the permission to the compa ny to supply electricity to the Athani Municipality was granted on 25 .1.1944 and t e company started cupplying electricity from theevening of 29 .1.44 In the agreement between the company and the Athani Municipality it was specifically laid down in clause (6) that "the Licensee shall not charge, the surcharge of 33/3 p.c.as per Bombay Government notification dated 11 th Ma rch

1943, from the Municipality with regards the street-lights referred to in para 2 clause (c) of this Agreement".

The Bombay Electricity Supply (licenced undertaking War Costs) Order, 1944 came into force from 16th June 1944.

Under sec. 7 of the order "Any existing surcharge applied by a licensee or sanction holder under the provisions of the orders issued in Govt, notf.P.W.D. No. 6041/36 dated the 11th March 1943 and No. 3053/36 dated the 8th December 1943 to his charges for the supply of enetgy shall be withdrawn upon the fixing of a rate of War Costs Surcharge applicable to his undertaking under this order of after 60 days from the commencement of this order, wheichewer is earlier."

Sec.58 of the order provides "Upon the rate of a War costs surcharge being fixed by the Provincial Government from time to time in accordance with this order, it shall not be lawful for the licensee or sanction holder concerned tosupply enetgy at other than charges surcharged at the rate for the time being so fixed".

The Second provisoto the above sevtion reads "Provided further that no war costs surcharge shall be affective upon the chargesfor the supply of energy under any contract entered inad after 1st May 1942, unless such contract provises for the same charges for energy as have been contained in similar previous contracts for similar supply by the licensee or sanction holder concerned (as to which in the event of dispute by any party interested, the decision of the Provincial Gov. ernment shall be final) ot unless and to such extent as such application maymay be expressly ordered by the provincial Government " In the said order also s. 10) Provided that " The Provisions of this order shall apply notwithanding anthing contained in any othe r wa law or in

in any license or sanction granted under the Indian Electricity Act, 1910, or in any contract or requisition.

Office of the R.L.A.

The Bombay Electricity (Surcharge) Act, 1946, S.6.

Under Clause 6 of the agreement dated 29-11-43 between the Athani Municipality and the Light & Power Suppliers Ltd., Athani, the licensee agreed not to charge surcharge of 33 1/3 % as per Bombay Government Notification dated 11-3-43 from the Municipality for the energy consumed for street Lighting. After the Bombay Electricity (Surcharge) Act, 1946 came into operation it appears that the Company has been claiming the surcharge from the Municipality notwithstanding the agreement. The question for R.L.A's consideration is whether the claim of the Company is legally tenable.

According to the Notification No.6041-36 dated 11-3-43 issued under Rule 81 of the Defence of India Rules, the levy of surcharge was optional. That Order was replaced by the Bombay Electric Supply (L.U.V.C.) Order, 1944, whereunder no war costs surcharge was effective upon the charges for the supply of energy under any contract entered into after 1-5-42, unless such contract provided for the same charges for energy as had been contained in similar previous contracts for similar supply by the licensee or sanction holde concerned. In view of this provision no surcharge was levied on the Athani Municipality by the Company under the aforesaid agreement which was of a date subsequent to 1-5-42. When the Bombay Electric Supply (L.U.V.C.) Order, 1944, lapsed, the Bombay Electricity (Surcharge) Act, 1946, was passed providing for the levy of surcharge. Under this act no distinction was made between the contracts entered into prior to & 1-5-42 and those subsequent to that date. Section 6 provides that the provision of this Act shall apply notwithstanding

anything done in any other law or in any licenso or sanction granted under the principle Act or in any contract for energy or for the maintainence of street lighting equipment. It is clear from this provision that this Act over-rides the contract betweenthe Athani Municipality and the Power Compay in so far as it relates to the agreement in respect of the levy of surcharge. Sect. 4 requires a licensee to charge the surcharges at the rate for the time being fixed by Government . Section 5 saves the existing surcharges in cases where the charges are not fixed by Government under section 3. Reading these provisions together it is apparent that notwithstanding the agreement it would be competent for the power Company to levy the surcharge for the period during which the Bombay Electricity (Surcharge) Act, 19 46, was in operation.

Sd/-
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Remembrancer of Legal Affairs.

U.O. to P. W.D. No. 14863, dated 21st December 1949.